IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9081 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M A MAKWANA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NK MAJMUDAR for Petitioner(s) : 1, ,
RULE SERVED for Respondent(s) : 1,
LAW OFFICER BRANCH for Respondent(s) : 2,
MR JB PARDIWALA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 15/10/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This petition under Article 226 of the Constitution is directed against the order dated 19.5.1994 passed by the High Court on the administrative side for dismissing the petitioner from service and the consequential notification dated 23.6.1994 of the State

Government in the Legal Department dismissing the petitioner from service.

2. The petitioner was appointed as a Civil Judge (Junior Division) on 21.8.1986. The petitioner's appointment was on probation. The petitioner was confirmed on the post of Civil Judge (JD) in June, 1989. On 10.6.1991 the petitioner was transferred from Kalawad to Bajana in Surendranagar District. The petitioner was served with the charge-sheet dated 11.3.1992 in a departmental inquiry. The petitioner submitted his reply denying the charges. Regular departmental inquiry was conducted by a learned Judge of the Ahmedabad City Civil & Sessions Court. The Inquiry Officer held the petitioner to be guilty of the charges levelled against him as per the report dated 11.2.1993. The petitioner was, therefore, given a show cause notice dated 29.3.1993 calling upon the petitioner to show cause why the disciplinary authority should not accept the inquiry report and why the petitioner should not be dismissed from service. The petitioner submitted his reply dated 15.4.1993 to the said notice. After considering the same, the High Court on the administrative side passed the impugned order dated 19.5.1994 for dismissing the petitioner from service. On the basis of the said recommendation, the State Government issued the notification dated 23.6.1994 dismissing the petitioner from service. Hence, the present petition.

3. Before setting out the contentions raised by Mr NK Majmudar for the petitioner, it is necessary to first set out the charges levelled against the petitioner and the findings given by the High Court on the administrative side.

"Charges levelled against the petitioner

(1) You often used to pick up unnecessary quarrels without any reasons with your neighbours i.e. the Veterinary Doctor Mr V.R. Patel of Veterinary Hospital, Bajana. On 18.10.991, you quarreled with him in a high tone and in an indecent language. You also threatened him to spoil his confidential report and to send him to jail in an offence punishable under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989. You are picked up quarrel with the Dresser Mr R.J. Jani and Peon, Mr Mehboob Ratanbhai of the said Veterinary Hospital and abused them in filthy and indecent language and threatened them to put them behind the bars.

(2) You are also in the habit of picking up quarrels with your staff members and threatened them using your offices. You also used filthy language while threatening them. You also used filthy language while threatening them. You also insulted your C.O.C., Stenographer, Peons, Water-server, Bench Clerk, Clerks, Advocates etc. by using indecent language. You also went to the extent of beating staff members. You also called the Police Constables as dogs. You also threatened the peons to dismiss them if they do not do the work entrusted by you at your residence.

(3) You are furthermore charged that you also insulted Mr Kasambhai Hada by touching your boot to his leg and asked him "why he is not standing aside when you were coming along the way". Thereby you made show of your Magisterial status and power and tried to misuse your office.

(4) You unnecessarily stopped the business of Gram Panchayat and did not allow them to hold meetings. You asked them as to why they have gathered in the office. You insulted Mr. Jivabhai Ramjibhai, Deputy Saroanch, Sulemanbhai Wala and Secretary Mr Raghubhai Dhanabhai and the Gram Panchayat, Bajana.

(5) You also misbehaved and insulted the Advocates by saying that you would stop them from practising. You also demanded cooking gas from them and told that one who would arrange the cooking gas for you, would be your man and he will be benefited by you."

4. The thrust of the petitioner's reply to the above charge-sheet was that before the petitioner's transfer to Bajana, the keys of the Court premises used to remain with the C.O.C. Mr Solanki, but after the petitioner took over as the Civil Judge (JD) at Bajana on 10.6.1991, the petitioner asked the C.O.C. to keep the keys of the Court premises at the petitioner's residence. The C.O.C., therefore, did not like this instruction. It was also the defence of the petitioner that the petitioner was a strict disciplinarian and, therefore also, the staff did not like such attitude on the part of the petitioner. It was also the petitioner's defence that the charges levelled against the petitioner had no connection with his judicial duties and, therefore, no departmental inquiry could be held against the petitioner in respect of such charges. At the departmental inquiry, the department examined as many as 16 witnesses. The petitioner did not lead any evidence in defence.

5. After hearing the Presenting Officer and the petitioner, the Inquiry Officer submitted his report dated 11.2.1993 and gave the following findings :-

S.No.	Charge	Finding
1	Delinquent Mr Makwana picked up unnecessary quarrels and threatened Dr V.R. Patel, Dresser Shri Jani and Peon Shri M.R. Rathod of Veterinary Hospital, Bajana with dire consequences.	Proved
2	Delinquent Mr Makwana used to threaten the staff members and also beat Peon Mr Mehta and Watchman Mr Shrimali.	Proved
3	Delinquent Mr Makwana caught hold of Peon Shri G.N. Raval at his residence and did indecenet act of raising the petticoat of his wife (Mr Makwana) and told the said peon indecently that the peon may have intercourse with the delinquent's wife, if wanted.	Proved
4	Delinquent Mr Makwana abused his Stenographer Mr PJ Wala at his residence and made allegations of changing figures of fine and thereby making correction in the judgments.	Not proved
5.	Delinquent Mr Makwana behaved in an insulting manner with Mr Bavalia, Criminal Clerk, on board and also told him that he is the agent of the Advocates.	Not proved
6.	Delinquent Mr Makwana insultedMr Kasambhai Huda by touching book to his leg and behaved indecently and thereby made show of his magsiterial power and tried to misuse his office.	Proved
7.	Delinquent Mr Makwana insulted and threatened the Sarpanch, Deputy Sarpanch and Secretary of Gram Panchayat.	Proved
8	Delinquent Mr Mawana misbehaved and insulted advocates and threatened to stop their practice and also demanded the cooking gas.	Proved
9	Delinquent Makwana misconducted himself by committing the above acts of grave misconduct, negligence, judicial impropriety and that the above acts are in violation of the provisions contained in Rule 3 of the Gujarat Civil Services (Conduct) Rules, 1971.	Proved
10.	The charges or any of the charges levelled against delinquent Mr Makwana are established.	Established

6. The High Court on the administrative side called upon the petitioner by show cause notice dated 29.3.1993 to show cause why the inquiry report should not be accepted and why the petitioner should not be dismissed from service. The petitioner submitted his reply dated 15.4.1993 stating that his request for inspection of the relevant document was not granted and, therefore, there was a breach of principle of natural justice. It was further further submitted by the petitioner that there was no complaint regarding the petitioner's judicial work and that the allegations made against the petitioner were at the most regarding the petitioner's temperament for which major penalty cannot be inflicted upon the petitioner. The thrust of the petitioner's defence was that the charges only indicated that the petitioner had misbehaved in his personal capacity with the staff members of his Court, outsiders and lawyers, but there was no misconduct in the discharge of his judicial duties and functions as a Judge. It was submitted that at the most the misconduct, if any, can result in a minor penalty of censure or stopping increment, but no major penalty was warranted.

It was also contended that the allegations were not corroborated by any supporting evidence and there was a concerted effort on the part of the staff to see that the petitioner was transferred from Bajana to some other place.

7. After considering the said reply to the show cause notice, the High Court on the administrative side held that the charges levelled against the petitioner were proved. The matter was heard by the Disciplinary Committee and the petitioner was represented by his learned counsel Mr MJ Thakore. At the said hearing, the record which was available during the inquiry was shown to the learned counsel for the petitioner who conceded that all the relevant papers were supplied to the petitioner and the inspection thereof was also

given and, therefore, no contention was urged on the ground of non supply of any relevant material.

8. On merits, the High Court on the administrative side held that the charges against the petitioner that he was ill-treating the staff members and was picking up unnecessary quarrels with the staff members and the neighbours without any reason were proved; that the petitioner was using indecent and filthy language; that the petitioner was also guilty of insulting and threatening the Deputy Sarpanch and Secretary of the Gram Panchayat after going near the Panchayat Officer and threatened them that he will send them to jail. The petitioner also threatened the advocates to get their coats removed. The High Court concluded that from the evidence on record, it was clear that the petitioner committed acts of misconduct and behaved in a manner unbecoming of a Judicial Officer. The cumulative effect of the conduct of the petitioner created a very dismal picture. The behaviour of the petitioner of beating the peon and the watchman and of behaving in a most obnoxious manner of catching the peon by his wrist, dragging him towards his own wife and raising her petticoat and uttering filthy language cannot be lightly brushed aside as a mere temperamental deviation. The High Court was of the view that the conduct established against the petitioner was so grave that it left no scope for any sympathy. Any punishment lesser than dismissal in a case of this type would amount to ridiculing the system itself. The High Court was, therefore, of the view that the petitioner should be dismissed forthwith from service. The High Court accordingly held that the petitioner is guilty of the charges levelled against him as above and was recommended to be dismissed from service. The recommendation came to be accepted by the State Government.

9. At the hearing, Mr Majmudar for the petitioner has reiterated the submissions urged before the Disciplinary Authority that the acts of misconduct alleged against the petitioner had no

connection with the discharge of his judicial duties; that the complainant – C.O.C. was not examined and that the evidence of the witnesses was mere hearsay evidence; that in his five years' service prior to his joining at Bajana, there were no complaints against him and that the entire thing was cooked up on account of the conspiracy with the C.O.C. and other staff members.

Mr Majmudar also submitted that the hearing was given by the High Court on the administrative side which took only the tentative decision, but the final decision was taken by the State Government and, therefore, there was breach of principle of natural justice that one who challenges must be heard.

It was also lastly submitted that the penalty of dismissal is too harsh to the penalty for the misconduct proved against the petitioner.

10. On the other hand, Mr Jamshed B Pardiwala, learned standing counsel for the High Court has opposed the petition and submitted that the decision of the High Court on the administrative side holding the petitioner guilty of the charges levelled against him and recommending the penalty of dismissal from service and the consequential Government notification do not call for interference whatsoever. It is submitted that this Court would not sit in appeal over the decision of the administrative authority and that the scope of judicial review is confined to the challenges on the well-known parameters whether the decision making process suffered from any breach of any statutory Rules or any principle of natural justice.

11. Having heard the learned counsel for the parties, we find that the petitioner has not been able to show any breach of any statutory Rules or any principles of natural justice which would warrant the interference of this Court with such administrative decision.

12. We may deal with the major submission of Mr Majmudar for the petitioner that the acts of misconduct alleged against the petitioner were in relation to his temperament or style of working and did not amount to misconduct in the discharge of judicial duties.

13. We find considerable substance in the submission of Mr Pardiwala, learned standing counsel for the High Court that as a Judicial Officer the petitioner was not merely to render judgments, but he had to deal with the staff members, advocates and litigants. It was also rightly submitted that in his interaction with the neighbours also, the petitioner did not maintain decorum required of a Judicial Officer and threatened the people, that he would send them to jail. The disciplinary authority has found, as a matter of fact, that misconduct on the part of the petitioner did not stop at mere ill-treatment of the staff members and lawyers or arrogant behaviour with them and with the neighbours, but the misconduct went much beyond all these acts. The petitioner was beating the peon and the watchman and the petitioner behaved in the most obnoxious manner of catching the peon by his wrist and after dragging him to his wife uttering filthy language which obviously could not be mentioned in the order of the disciplinary authority.

14. The petitioner was a Judicial Officer, whether he was dealing with the staff members or advocates or litigants. Apart from not maintaining decorum which a Judicial Officer is required to maintain, the misconduct on the part of the petitioner even went to the extent of voyeurism. These were not mere temperamental deviations, but serious misconduct which even an ordinary Class-III or Class-IV employee would not be permitted to get away with.

15. As regards the contention that the original complainant – COC was not examined, all the staff members, neighbours, panwala in whose presence the acts of misconduct were committed, were

examined as witnesses and there were as many as 16 such witnesses. Hence, merely because the COC against whom the petitioner had made allegations did not step in as a witness cannot, and did not, make any dent on the department's case that the petitioner had committed such serious acts of misconduct.

16. As regards the contention that in five years' service prior to his joining at Bajana, the petitioner was not found to be guilty of any misconduct is a mere argument of despair. If the petitioner's misbehaviour was suffered by other persons at other places, that cannot be a ground for not proceeding against the petitioner departmentally when the acts of misconduct by the petitioner with a large number of staff members, lawyers, litigants and neighbours at Bajana crossed the threshold. Even if the petitioner was not guilty of such misbehaviour at any other place, that cannot be a ground for condoning such acts of misbehvaiour at Bajana.

17. The contention that the hearing was not given by the State Government is misconceived. The Inquiry Officer appointed by the High Court conducted the inquiry and submitted the report holding that the charges levelled against the petitioner were substantially proved. The petitioner was given a copy of the Inquiry Officer's report alongwith the show cause notice and, therefore, in the said show cause notice it was mentioned that the High Court had tentatively decided to accept the Inquiry Officer's report. Under the provisions of Article 235 of the Constitution, the High Court on the administrative side is vested with the disciplinary control over the staff of the subordinate Courts and, therefore, the recommendation of the High Court in the form of the order dated 16.5.1994 was binding on the State Government and hence, merely because the formal notification was issued by the State Government, that did not mean that the High Court was not the disciplinary authority.

18. As regards the contention that the punishment of dismissal is too harsh, in our view, the High Court on the administrative side has rightly taken the view that the misconduct established against the petitioner was so grave that it left no scope for any sympathy and any punishment lesser than dismissal in a case of this type would amount to ridiculing the system itself.

19. We do not find any merit in any of the contentions raised on behalf of the petitioner.

20. The learned advocate for the petitioner states that the petitioner has started practice as a lawyer after his dismissal from service. We cannot help wondering how a person who, while exercising the judicial powers and discharging judicial functions, could behave in such an obnoxious manner, would behave as a practicing lawyer. It is high time the Bar Council takes into consideration the grounds on which a Judicial Officer is dismissed from service before deciding to grant him Sanad. It would also be desirable if the Bar Council were to consider whether the Sanad could be revoked when such behaviour on the part of an applicant, which was not brought to its notice at the time of granting Sanad is subsequently brought to its notice.

21. The petition is accordingly dismissed with costs quantified at Rs.5,000/- (five thousand) which shall be paid within one month from today.

Rule is discharged.

[M.S. SHAH, J.]

[K.A. PUJ, J.]

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